
**STATE HEARING AND REQUEST FOR REVIEW
REQUEST FOR REVIEW**

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DIVISION 22 STATE HEARING AND REQUEST FOR REVIEW

CHAPTER 22-100 REQUEST FOR REVIEW

22-101 DEFINITIONS 22-101

- (a) The following definitions shall apply wherever the terms are used in describing and reporting review activities in this chapter.
- (1) Complaint-A communication received from an applicant for or recipient of public social services or food stamps; a person acting for the applicant or recipient such as a legal guardian, relative, friend, or other spokesperson who has knowledge of his/her need; relatives found liable for contributions; another person, including an anonymous person; which includes but is not limited to:
- (A) A request or implication of a request for some review or service by the CWD or the Department.
- (B) An expression of misunderstanding or dissatisfaction with some specific action, lack of action, or series of actions by a county or counties affecting an application for or receipt of public social services or food stamps.
- (C) A request or implication of a request for review and negotiation with the county regarding possible adjustment rather than a state hearing.
- (D) A report of fraud or misuse of funds by recipients or misuses of food stamps.
- (2) State Hearing-An administrative hearing procedure established pursuant to Sections 10950 through 10965 of the Welfare and Institutions Code, see Operations Manual Section 22-001.

22-105 REQUEST FOR REVIEW -- GENERAL 22-105

- .1 Any expression of misunderstanding or dissatisfaction, oral or written, shall be accepted as a request for review.
- .11 At such time the right to a state hearing and aid paid pending shall be explained.

22-107	COUNTY DEPARTMENT OR CALIFORNIA DEPARTMENT OF SOCIAL SERVICES REVIEW	22-107
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- .1 A dissatisfied person may request the CWD or the Department to review county action, or failure to act in any matter relating to his/her grant, food stamps, or treatment.
- .11 The individual shall be encouraged to exhaust CWD adjustment procedures before requesting the Department to review his/her problem.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-109	CWD RESPONSIBILITY	22-109
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- .1 Availability of Review
 - .11 In all individual relationships the CWD shall strive for prompt, simple, and precise explanations of its actions to assure the maximum understanding on the part of the individuals.
 - .111 If this is not achieved between the individual and the social worker, the CWD shall be responsible for providing, administratively, a process through which the individual will receive an appropriate explanation or a resolution of his/her problem.
- .2 Designation of Staff to Conduct Review
 - .21 The CWD, in accordance with its size and/or administrative structure, shall specifically designate staff to be responsible for the activities connected with requests for review.
 - .211 Such staff shall:
 - (a) Be in a position to reassess promptly the client's situation in the light of applicable regulations with freedom to consider alternatives other than confirmation of the action under review.

22-109 CWD RESPONSIBILITY (Continued) 22-109

- (b) Have authority to take immediate action and effect any adjustment as may be appropriate.
- .212 The staff review shall discover and correct any of the following:
 - (a) Failures of communication between complainant and worker.
 - (b) Erroneous application of public social service or food stamp regulations.
 - (c) Failure to provide aid and services promptly and humanely, without discrimination, and in a manner as to encourage self-respect and self-reliance.
- .3 Dissatisfaction with Review
 - .31 As part of the review process, the client shall be informed by county staff of his/her right to a state hearing.
- .4 Complaint Records and Analysis
 - .41 In the Food Stamp Program, counties shall maintain records of complaints received and their dispositions (see Section 22-101(a)(1)), and shall review records at least annually to assess whether patterns of problems exist in local offices or throughout the county.
 - .411 The results of this review shall be reported annually to the Department on the report form provided by the Department.

22-113	CALIFORNIA DEPARTMENT OF SOCIAL SERVICES RESPONSIBILITY	22-113
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- .1 The Department shall be responsible for providing a process whereby the individual who has not achieved an understanding with the county may have his/her situation reassessed and reviewed promptly.

HANDBOOK BEGINS HERE

- .11 The review by the Department is conducted by the Public Inquiry and Response Unit. A request for review is to be distinguished from the preliminary hearing procedure described in Section 22-074.

HANDBOOK ENDS HERE

- .2 The Department's complaints staff shall:
- .21 Receive the request for review;
 - .22 Contact the designated staff in the appropriate county;
 - .23 Inform the county of the client's problem; and
 - .24 Request that the problem be promptly reassessed.
- .3 The Department staff may inform the county of the intent or meaning of applicable regulations.
- .4 As part of the review process the client shall be informed of his/her right to a state hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

**STATE HEARING AND REQUEST FOR REVIEW
ADMINISTRATIVE FRAUD HEARINGS - GENERAL**

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CHAPTER 22-200 ADMINISTRATIVE FRAUD HEARINGS - GENERAL

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CHAPTER 22-200 ADMINISTRATIVE FRAUD HEARINGS - GENERAL

22-200 ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-200

- .1 The regulations in this chapter shall apply to hearings resulting from a CWD's determination, supported by documentation, that a food stamp administrative disqualification for an intentional Program violation is appropriate and in accordance with CDSS' Manual of Policies and Procedures, Division 20, Chapter 20-300.
- .2 Administrative disqualification hearings are distinct from state hearings discussed in Chapter 22-000.

22-201 GENERAL PROVISIONS 22-201

- .1 An administrative disqualification hearing (ADH) at the state level shall be initiated when a CWD informs the Administrative Adjudications Division (AAD) of the California Department of Social Services (CDSS) that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.
- .2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.
- .3 The CWD shall remain responsible for:
 - .31 Investigating the case and assisting the respondent prior to the hearing;
 - .32 Presenting the CWD's position during the hearing; and
 - .33 Complying with the hearing decision.

22-201 GENERAL PROVISIONS (Continued) 22-201

.4 Definitions

.41 The definitions in Section 22-001 shall apply to this chapter. The following additional definitions, in alphabetical order, shall apply wherever the terms are used in this chapter:

.411 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an administrative disqualification hearing at the state level and by the CWD-designated hearing official after a local level hearing.

.412 Notice of Hearing - Means the written notification which initiates an administrative disqualification hearing (see Section 22-202.3) and is provided as follows:

(a) At the state level, CDSS shall provide written notification to the respondent and the CWD and

(b) At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

.413 Respondent - Means the household member(s) who the CWD has determined may be subject to administrative disqualification. To the extent the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the administrative disqualification hearing.

.5 Procedures Governing State Hearings Also Applicable to Administrative Disqualification Hearings

(a) The following provisions of Chapter 22-000 shall be applicable to administrative disqualification hearings:

(1) Section 22-002 relating to determination of time limit;

(2) Section 22-010 relating to authorized representatives;

22-201 GENERAL PROVISIONS (Continued) 22-201

- (3) Section 22-023.1³ relating to assignment of county representatives;
 - (4) Section 22-023.2 relating to duties of county representatives prior to and at the hearing;
 - (5) Section 22-025 relating to situations where the hearing is held in a county other than the responsible county;
 - (6) Sections 22-045.1 and .2 relating to the time and place of the hearing;
 - (7) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
 - (8) Section 22-050 relating to evidence;
 - (9) Section 22-051 relating to the examination of records and issuance of subpoenas;
 - (10) Section 22-052 relating to witness fees and mileage;
 - (11) Section 22-053.2 relating to continuances for additional evidence;
 - (12) Section 22-055 relating to disqualification of hearing officers;
 - (13) Section 22-059 relating to communications after the hearing.
- .6 Both the CWD's representative and the claimant's representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, then he/she may not be present as an adviser until after he/she has testified.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i).

22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (ADH) 22-202

- .1 When the CWD determines, based on clear and convincing evidence, that a household member(s) is subject to disqualification from the Food Stamp Program because of a suspected intentional Program violation and believes the household member(s) should be disqualified in accordance with Division 20, Chapter 20-300 the CWD shall:
 - .11 Notify the Chief Administrative Law Judge in writing; and,
 - .12 Request that an administrative disqualification hearing be scheduled.
 - .121 The notification shall set forth the charges against the respondent and contain a summary of the evidence.
- .2 The request for a state or local level hearing shall be reviewed and signed by a county supervisory employee to ensure that clear and convincing evidence exists for an IPV hearing request.
- .3 CDSS shall monitor that the requests sent pursuant to Sections 22-201.1 and .2 are appropriate for IPV consideration in that they represent cases in which clear and convincing evidence has been identified to warrant the scheduling of such hearing.
 - .31 Upon receipt of the request described in Section 22-201.1 or .2, the Department or the CWD shall schedule an administrative disqualification hearing.
- .4 Waiver of Right to an Administrative Disqualification Hearing
 - .41 A waiver request form shall be sent with the Notice required by Section 22-202.5 to the respondent. The waiver request form shall be a written notification which informs respondent of the possibility of waiving the ADH. This waiver request form shall include:
 - (a) The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing or to the CWD in the case of a local level hearing. If the respondent fails to sign the return the waiver request to the Department within 20 days from the date of the notice, the ADH shall be held as scheduled.
 - (b) A signature block for the respondent's and the head of household's signature.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING	22-202
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(Continued)

- (c) A statement that the head of the household must sign if the respondent is not the head of the household.
- (d) A statement of the respondent's right to remain silent concerning the charge(s) against the respondent and that anything said or signed by the respondent concerning the charge(s) can be used against the respondent in a court of law.
- (e) A statement indicating that the waiver of the respondent's right to an ADH will result in disqualification and a reduction in benefits for the period of disqualification even if the respondent does not admit to the facts as presented by the CWD.
- (f) Statements indicating whether the respondent wishes to admit that facts as presented are correct. Those statements shall be worded as follows:
 - (A) I admit to the facts as presented, and understand that a disqualification penalty shall be imposed if I sign this waiver.
 - (B) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty shall result.
- (g) The telephone number and name of the CWD representative to contact for additional information about the ADH, and the waiver request.
- (h) A statement informing the remaining household members that they shall be held responsible for repayment of the resulting claim, unless the claim has already been paid.
- (i) A statement that the signing of the waiver form is entirely voluntary and that failure to sign the form shall not affect eligibility.
- (j) A statement that the respondent's income and resources shall continue to be counted in the food stamp household's eligibility determination even though the respondent is disqualified from participation in the Food Stamp Program.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING	22-202
	(Continued)	

- (k) A warning of the disqualification penalties which could be imposed (as provided in Section 20-300.31) and a statement of which penalty shall be imposed as a result of the respondent having consented to disqualification.
 - (l) A statement in bold print that says, "DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!."
- .42 If the respondent voluntarily and knowingly submits a signed waiver of his/her right to an ADH within the 20-day period to the Department in a state level hearing, or to the CWD in a local level hearing, the Department in a state level hearing, or the CWD in a local level hearing, shall submit a signed copy of the waiver to the CWD and shall notify the CWD to initiate the notification of disqualification action and imposition of disqualification penalties in accordance with CDSS' Manual of Policies and Procedures, Division 20, Sections 20-300.24, .3, and .4.
- .43 No further administrative appeal procedure exists after a respondent waives his/her right to an ADH and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent ADH or a state hearing decision. The respondent, however, is entitled to seek relief in a court having appropriate jurisdiction.
- .44 The CWD shall inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
- .441 The written notice shall be provided in person or by mail pursuant to Section 22-202.511 et seq., except Section 22-202.511(a).
- (a) The notice shall contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
- .442 The waiver shall be as described in Section 22-202.4.
- (a) The notice shall contain language that informs the respondent that he/she may rescind the waiver within seven (7) working days after the date the waiver was signed if, after signing the waiver, the respondent changes his/her mind.
 - (b) The notice shall contain language that informs the respondent how to obtain a copy of the state's applicable published hearing procedures.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (Continued)	22-202
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.443 The CWD shall not use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.

.5 Notice of Hearing

.51 CDSS for the state level hearing, or the CWD for the local level hearing, shall send a written notice to the respondent, with a copy to the CWD at least 30 days in advance of the date of the hearing or of a consolidated hearing.

.511 The notice shall either be personally served or sent by first class regular mail. If no proof of receipt is obtained, evidence of nonreceipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain, at a minimum:

- (a) The date, time, and place of the hearing.
- (b) A statement that the respondent is entitled to one postponement and may receive additional postponements for good cause. The total period for all postponements shall not exceed 30 days, and the request for postponement must be made at least 10 days in advance of the date of the scheduled hearing.
- (c) The charges against the respondent.
- (d) A summary of the evidence, and how and where the evidence can be examined.
- (e) A warning that the decision will be based solely on information provided by the CWD if the respondent fails to appear at the hearing.
- (f) A warning that an individual found to have committed an intentional Program violation shall be ineligible to participate in the Food Stamp Program for six months for the first violation, 12 months for the second violation, and permanently for the third violation and a statement of which penalty the CWD believes is applicable to the respondent's case.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING	22-202
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(Continued)

- (g) A listing of the respondent's rights as contained in Section 22-049.7.
- (h) A statement that the hearing does not preclude the County, State or Federal government from prosecuting the respondent for the intentional Program violation in a civil or criminal court action, or from collecting an overissuance related to the alleged intentional Program violation.
- (i) A statement that the respondent can call the CWD to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the CWD shall provide when called, the phone number of a lawyer referral service or the local bar association.
- (j) Language that informs the respondent how to obtain a copy of the state's applicable published hearing procedures.
- (k) A statement that in order to reschedule the hearing, the respondent shall have 10 days from the date of the scheduled hearing to present good cause for failure to appear, as set forth in Section 22-053.14.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e) and (f); and United States Department of Agriculture, Food and Consumer Service, Waiver Number 950048.

22-210	HEARING PROCEDURE	22-210
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- .1 Local level and state level IPV ADHs shall be conducted pursuant to the applicable provisions of Chapter 22-000.
- .11 The hearing officer shall advise the respondent that he/she may refuse to answer questions during the hearing.
- .12 The hearing shall be conducted by an impartial ALJ at the state level, or an impartial hearing official at the local level who has not had previous involvement in the case.
- .13 The ALJ and local level hearing officials shall prepare fair, impartial, and independent decisions.

HANDBOOK BEGINS HERE

- .14 See Section 22-330 for instances when a Food Stamp ADH can be combined with an AFDC ADH.

HANDBOOK ENDS HERE

.2 Postponements

At the request of the respondent, the Office of the Chief Administrative Law Judge shall be permitted to postpone the hearing for a period of up to 30 days provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

- .21 The Office of the Chief Administrative Law Judge shall be permitted to limit the number of the postponements to one unless there is good cause established in accordance with Section 22-053.14.
- .22 The total period for one or more postponements shall not exceed 30 days.
- .23 The time limit for rendering a decision on the hearing may be extended for the length of time the hearing is postponed.

.3 Cancellation of Hearing

If after a hearing has been scheduled, the CWD finds that further evidence indicates that an administrative disqualification is no longer appropriate, it shall notify the Chief Referee.

22-210 HEARING PROCEDURE (Continued) 22-210

- .31 The Chief Referee shall then notify the respondent and the CWD that the administrative disqualification hearing is cancelled.
- .4 Respondent Fails to Attend Hearing
 - .41 If the respondent cannot be located or fails to appear at a hearing, the hearing shall be conducted in the absence of the respondent.
 - .411 The hearing officer shall review the evidence presented by the county and prepare a decision based upon that evidence.
 - .42 If the respondent establishes good cause for failure to attend the hearing, a new hearing shall be scheduled.
 - .421 The criteria for good cause shall be the criteria set forth in Section 22-053.14.
 - .422 The respondent shall establish good cause for failure to attend the hearing no later than 10 days after receiving the hearing decision.
 - .423 The respondent shall establish good cause by contacting the Chief Referee by letter or by telephone.
 - (a) The Chief Referee shall have authority to require that the respondent submit verification of good cause.
 - .424 The respondent and the CWD shall be notified in writing of the good cause determination and the determination shall be placed into the hearing record.
 - .425 If good cause is established, the hearing decision shall have no affect on the respondent's status. Nor shall it affect the household's continuing benefit, except as provided in Section 63-805.2.
 - (a) Pending the rehearing decision, any benefits lost to the household as a result of the rescinded decision shall be restored in accordance with Section 63-802.1.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16.

22-215	LOCAL LEVEL HEARINGS	22-215
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- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-220.2 shall also inform the household member:
 - .21 Of the right to appeal the local level decision within 25 days after the date the notice has been sent to the respondent by the county (see Section 22-340.6);
 - .22 Of the date the disqualification shall take effect unless a state level hearing is requested; and
 - .23 That benefits shall be continued pending a state level de novo hearing if the household is otherwise eligible.
- .3 If the household member appeals the local level decision, the advance notice of the state level hearing, as specified in Section 22-202 shall be mailed to the respondent at least 15 days prior to the date of the scheduled state level hearing and shall also inform the household member that the local hearing decision shall be upheld if the household or its representative fails to appear without good cause for the hearing.
- .4 The local level hearing decision shall be made within 90 days from the date of the notice scheduling the hearing.
- .5 When a local level decision is appealed, CDSS shall conduct the state level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .51 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .6 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i).

22-220	HEARING DECISION	22-220
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- .1 After the hearing has been closed, the hearing officer shall prepare a written decision.
- .2 The decision shall include:
 - .21 A statement of facts.
 - .22 The statutes and regulations involved.
 - .23 The reasoning which supports the decision.
 - .24 Responses to arguments raised by the respondent.
- .3 Any determination of an intentional Program violation which is made in such a decision shall be based upon clear and convincing evidence.
- .4 The hearing officer's proposed decision shall be subject to the review of the Chief Referee and the Director.
 - .41 The Chief Referee or Director shall have the authority to reject the proposed decision of the hearing officer and prepare a separate decision based upon the record in the case or to order an additional hearing.
 - .42 Any such decision shall be subject to the provisions of Section 22-220.2.
- .5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
 - .51 If the decision is adverse to the respondent, the decision shall notify the respondent of the right to judicial review, and shall advise the respondent that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of suit.

22-230	DISPOSITION OF ADMINISTRATIVE DISQUALIFICATION HEARINGS	22-230
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- .1 All administrative disqualification hearing decisions shall be mailed within 90 days of the date of the notice of hearing described in Section 22-202.3.
- .11 If the decision results in upholding the disqualification of the respondent, the CWD shall initiate the administrative action in accordance with SDSS' Manual of Policies and Procedures, Division 20, Chapter 20-300.
- .12 If the hearing is postponed (see Section 22-210.2), the 90-day period shall be extended by the period of time that the case is postponed.
- .13 If a new hearing is scheduled pursuant to Section 22-210.42, a new 90-day period shall commence from the date the respondent and CWD are notified of the new hearing.
- .14 If a hearing is continued or postponed, (see Section 22-053) the respondent shall be given a written notice that explains that the time limit for rendering a decision will be extended by the same number of days as the hearing is postponed or continued.
- .15 An administrative disqualification decision is not subject to the provisions of Section 22-065.
- .151 There is no right to a rehearing regarding a finding of intentional Program violation.
- .152 A decision finding intentional Program violation shall inform the respondent concerning the right to judicial review.

22-240	CONSOLIDATION OF ADMINISTRATIVE DISQUALIFICATION HEARING WITH STATE HEARING	22-240
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- .1 At his/her discretion or upon the request of the respondent or the CWD, the Chief Referee shall have the authority to consolidate requests for a state hearing with an administrative disqualification hearing.
- .11 If the factual issues arise out of the same, or related circumstances and the household receives prior notice (as required in Section 22-202.3) then the hearings will be combined. However, the respondent, upon request, shall be allowed to waive the 30-day advance notice when the hearing requests are consolidated.

22-240	CONSOLIDATION OF ADMINISTRATIVE DISQUALIFICATION HEARING WITH STATE HEARING (Continued)	22-240
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- .12 In such cases, although only one actual hearing may be held, the procedures governing the administrative disqualification hearing aspect of the case and the state hearing aspect shall be separately identified and followed.
- .13 The hearing officer shall have the authority to:
 - .131 Sever the proceedings and hold each hearing separately.
 - .132 Postpone or continue the state hearing and not postpone or continue the administrative disqualification hearing or vice versa.
- .14 If a state hearing case is consolidated under this section, the time limits for its disposition, shall be the same as for the administrative disqualification hearing, (see Section 22-230).
- .15 If a state hearing case is consolidated under this section, for the purpose of settling the amount of the claim at the same time as determining whether or not an intentional Program violation has occurred, the respondent shall lose the right to a subsequent state hearing on the amount of the claim.
- .2 A pending administrative disqualification hearing shall not affect the individual's or household's right to be certified or to participate in the Food Stamp Program.
- .3 In the Food Stamp Program, when the determination of intentional Program violation is reversed by the court, the CWD shall reinstate the individual if the household is eligible in accordance with procedures in CDSS' Manual of Policies and Procedures, Division 63, Section 63-805.2.

**STATE HEARING AND REQUEST FOR REVIEW
AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL**

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CHAPTER 22-300 AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL

22-301 ADMINISTRATIVE DISQUALIFICATION HEARINGS 22-301
(ADHs) - GENERAL

- .1 The regulations in this chapter shall apply to hearings resulting from a county welfare department's (CWD's) determination, supported by documentation in the CWD's possession, that an individual has allegedly committed an intentional program violation (IPV) in the AFDC program as set forth in the California Department of Social Services (CDSS) Manual of Policies and Procedures, Division 20, Chapter 20-350.
- .2 Administrative disqualification hearings are distinct from the state hearings discussed in Chapter 22-000.
- .3 Those cases in which the prosecuting authority has determined (a) that facts do not warrant prosecution, or (b) those cases previously referred for prosecution and declined, shall be returned to the CWD and the CWD shall initiate referral action for an ADH through CDSS, in accordance with CDSS Manual of Policies and Procedures, Division 22.
- .4 The CWD shall not initiate an ADH against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of the appropriate jurisdiction, if the factual issues of the case arise out of the same or related circumstances.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(a)(1) and 45 CFR 235.112(a).

22-305 GENERAL PROVISIONS 22-305

- .1 An ADH at the state level shall be initiated when a CWD informs the Department that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.
- .2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.

22-305 GENERAL PROVISIONS
(Continued)

22-305

- .21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.
- .3 In both state and local level hearings, the CWD shall remain responsible for:
 - .31 Investigating the case and assisting the respondent prior to the hearing;
 - .32 Presenting the CWD's position during the hearing; and
 - .33 Complying with the hearing decision.
- .4 Definitions

The definitions in Section 22-001 shall apply unless they are specifically provided for in this chapter. The following additional definitions, in alphabetical order, shall apply wherever the terms are used in this chapter:

 - .41 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an ADH at the state level and by the CWD-designated hearing official after a local level hearing.
 - .42 Intentional Program Violation (IPV) - Means an action by an individual, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant, which is intentionally:
 - .421 A false or misleading statement or misrepresentation, concealment, or withholding of facts, or
 - .422 Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

22-305 GENERAL PROVISIONS
(Continued)

22-305

HANDBOOK BEGINS HERE

- (a) To determine what constitutes an IPV, CDSS recognizes a distinction in the following:
- (1) Intentional concealment or willful misrepresentation which may result in an IPV.

EXAMPLE: In completing the Monthly Eligibility Reports (CA 7), respondent checks the box indicating family has no income. Respondent also checks box indicating that no one had started employment that month. County evidence indicates respondent did start work during the month it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

HANDBOOK CONTINUES

22-305 GENERAL PROVISIONS
(Continued)

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HANDBOOK CONTINUES

- (2) Incorrect representation, negligence, or omissions because of a mistake or a lack of understanding of eligibility requirements which do not result in an IPV.

EXAMPLE: Respondent reports that he/she began employment the last week of the reporting month, and that he/she will be paid every two weeks. Respondent completes the next CA 7 and checks the: "No" box for income received in the month.

- (3) The CWD's omission, neglect, or error in explaining requirements for assistance or in processing information, which does not result in an IPV.

EXAMPLE: Respondent completes CA 7 without answering question relating to household's receipt of income during the month. Respondent does this for five months and CWD fails to return the CA 7 as incomplete. Evidence establishes respondent had income in each of these months.

HANDBOOK ENDS HERE

- .43 Notice of Hearing - Means the written notification, as specified in Section 22-315.5, which initiates an ADH and is provided as follows:

.431 At the state level, CDSS shall provide written notification to the respondent and the CWD and

.432 At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

- .44 Respondent - Means the member(s) of the assistance unit (AU) who the CWD has determined may be subject to administrative disqualification. To the extent that the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the ADH.

22-305	GENERAL PROVISIONS (Continued)	22-305
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- .45 Sufficient Evidence - Means the documentary and other evidence in the CWD's possession that the CWD determines may establish that the respondent has committed an IPV based on a preponderance of evidence as the standard of proof.
- .5 The following provisions of Chapter 22-000, State Hearings - General, shall be applicable to ADHs:
- (a) Section 22-002 relating to determination of time limit;
 - (b) Section 22-010 relating to authorized representatives;
 - (c) Section 22-023.13 relating to assignment of county representatives;
 - (d) Sections 22-023.2 and .3 relating to duties of county representatives prior to and at the hearing;
 - (e) Section 22-027 relating to situations where the hearing is held in a county other than the responsible county;
 - (f) Sections 22-045.1 and .2 relating to the time and place of the hearing;
 - (g) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
 - (h) Section 22-050 relating to evidence;
 - (i) Section 22-051 relating to the examination of records and issuance of subpoenas;
 - (j) Section 22-052 relating to witness fees and mileage;
 - (k) Section 22-053.2 relating to continuances for additional evidence;
 - (l) Section 22-055 relating to disqualification of ALJs;
 - (m) Section 22-059 relating to communications after the hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(b) and 45 CFR 235.113(b)(2).

22-310 REQUIREMENT FOR NOTICES OF PENALTIES FOR IPV 22-310

The CWD shall provide all applicants with a written notice of the disqualification penalties for IPV's under this section at the time of the application. Respondents who are recipients on the date of approval of the State Plan amendment implementing this optional program must be provided a written notice no later than the next redetermination for AFDC eligibility.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(d) and 45 CFR 235.113(b)(3).

22-315 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING 22-315

- .1 When the CWD determines, based on sufficient evidence, that a respondent is subject to disqualification from the AFDC program because of a suspected IPV and determines the respondent should be disqualified in accordance with Chapter 20-300, the CWD shall send the completed request for hearing to:
 - .11 The Administrative Adjudications Division of CDSS for the scheduling of an ADH at the state level;
or
 - .12 The CWD-designated unit for the scheduling of an ADH at the local level.
- .2 The request specified in Section 22-315.1 shall set forth the charges against the respondent, contain a summary of the evidence, and identify the specific disqualification period believed to be appropriate.
 - .21 The notification shall be reviewed and signed by a county supervisory employee to ensure that sufficient evidence exists for an IPV hearing request.
- .3 CDSS shall monitor that the requests sent pursuant to Section 22-315.1 are appropriate for IPV consideration in that they represent cases in which sufficient evidence has been identified to warrant the scheduling of such hearings.
- .4 The ALJ in the state level hearing, or the hearing official in the local level hearing, shall base the determination of an IPV on the preponderance of evidence that is in the hearing record.

22-315 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING **22-315**
(Continued)

- .5 CDSS for the state level hearing, or the CWD for the local level hearing, shall send a written notice to the respondent alleged to have committed the IPV which is received by the respondent at least 30 days prior to the date of the disqualification hearing. The notice shall be either personally served or sent by first class regular mail. If no proof of receipt is obtained, evidence of nonreceipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall include the following:
- (a) The date, time and location of the hearings;
 - (b) The charge(s) against the respondent;
 - (c) A summary of the evidence, and how and where the evidence can be examined;
 - (d) A warning that the respondent's failure to appear without good cause shall result in a decision by the ALJ or hearing official based solely on the information provided by the CWD at the hearing;
 - (e) A statement that the respondent may request a postponement of the hearing as specified in Section 22-325 provided that such request is made to CDSS, or CWD in the case of a local level hearing, at least 10 days in advance of the scheduled hearing;
 - (f) A statement that the respondent may request a postponement within 10 days of the hearing if good cause is present;
 - (g) A statement that the respondent has 10 days from the date of the scheduled hearing to present to CDSS at the state level, or CWD in the case of a local level hearing, good cause for failure to appear in order to receive a new hearing;
 - (h) A description of the penalties that can result from a determination that the respondent has committed an IPV and a statement of which penalty is applicable to the respondent;
 - (i) A statement that the hearing does not preclude the county or state government from prosecuting the respondent for an IPV in a civil or criminal court action, or from collecting an overpayment;

22-315	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (Continued)	22-315
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- (j) A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed IPV's;
- (k) An explanation that the respondent may waive his/her right to appear at an ADH (see Section 22-320); and
- (l) A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him/her in a court of law.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.113(b)(2), (b)(3), and (b)(8).

22-320 WAIVER OF THE ADMINISTRATIVE DISQUALIFICATION HEARING 22-320

- .1 The respondent shall be allowed to waive his/her right to appear at an ADH.
- .2 The respondent shall be informed by the written notice as specified in Section 22-315.5(k) of the opportunity to waive his/her right to a hearing.
 - .21 The statement that the respondent may waive the right to appear at an ADH shall include at a minimum:
 - .211 The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing, or to the CWD in the case of a local level hearing. If the respondent fails to sign and return the waiver request within such time period, the ADH shall be held as scheduled.
 - .212 A signature block for the respondent's and the caretaker relative's signature.
 - (a) A statement that the caretaker relative must sign if the respondent is not the caretaker relative.
 - .213 A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him or her in a court of law;
 - .214 A statement of the fact that waiver of the respondent's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the respondent does not admit to the facts as presented by the CWD; and
 - .215 A statement specifying that the respondent has an opportunity to specify whether or not he/she admits to the facts as presented by the CWD.
 - .216 A statement in bold print that says, "DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!."
- .3 The CWD shall inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
 - .31 The written notice shall be provided in person or by mail pursuant to Section 22-315.5 et seq., except Section 22-315.5(a).

22-320 WAIVER OF THE ADMINISTRATIVE DISQUALIFICATION HEARING 22-320
(Continued)

- .311 The notice shall contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
- .32 The waiver shall be as described in Section 22-320.21.
- .321 The notice shall contain language that informs the respondent that he/she may rescind the waiver within seven (7) working days after the date the waiver was signed if, after signing the waiver, the respondent changes his/her mind.
- .33 The CWD shall not use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.
- .4 When the respondent waives his/her right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the respondent admits or denies the charges.
- .41 CDSS, or the CWD in the case of a local level hearing, shall send a written notice informing the respondent of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period.
- .42 If a case has been terminated the disqualification period shall be imposed after a reapplication for AFDC assistance is approved.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10); 7 CFR 273.16(f)(1); and 45 CFR 235.113(c)(1), (2), and (3).

22-325	POSTPONEMENTS	22-325
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- .1 An ADH at both the state and local level shall be automatically postponed at the respondent's request provided that the request for postponement is made at least 10 days in advance of the date of the scheduled disqualification hearing.
 - .11 For written requests, the letter must be postmarked at least 10 days in advance of the hearing date.
 - .12 For verbal requests, the controlling date is the date the respondent initially called and spoke with a worker to request a postponement.
- .2 Postponements shall be allowed within the 10-day period prior to the hearing date but shall be granted only on the basis of good cause being present as per Section 22-053.16.
- .3 The hearing shall not be postponed for more than a total of 30 days.
- .4 The number of postponements shall be limited to one.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.113(b)(4).

22-330 HEARING PROCEDURES

22-330

- .1 Local level and state level IPV ADHs shall be conducted pursuant to the applicable provisions of Chapter 22-000.
 - .11 The hearing shall be conducted by an impartial ALJ at the state level, or an impartial hearing official at the local level who has not had previous involvement in the case.
 - .12 The ALJ and local level hearing officials shall prepare fair, impartial, and independent decisions.
- .2 Medical assessments shall be obtained at the expense of CDSS and made part of the record if the ALJ or hearing official considers it necessary.
- .3 The respondent or his/her representative shall have adequate opportunity to:
 - .31 Examine the contents of the case file, and all documents and records to be used at the hearing by CDSS at the state level, or the CWD at the local level, at a reasonable time before the date of the hearing, and during the hearing;
 - .32 Present the case himself/herself or with the aid of an authorized representative;
 - .33 Bring witnesses;
 - .34 Establish all pertinent facts and circumstances;
 - .35 Advance any arguments without undue influence; and
 - .36 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- .4 CDSS at the state level, or the CWD at the local level, shall combine a respondent's Food Stamp and AFDC ADHs into a single hearing if the factual issues arise out of the same or related circumstances.
- .5 CDSS at the state level may consolidate a respondent's state hearing governed by 45 CFR 205.10 with a disqualification hearing based on the same or related circumstances provided that the respondent receives prior written notice of the consolidation.
 - .51 If the hearings are combined, CDSS shall follow the time frames for conducting ADHs.

22-330 HEARING PROCEDURES **22-330**
(Continued)

- .6 Both the CWD and the claimant shall have the right to have a representative present throughout the hearing.
- .7 Both the CWD's representative and the claimant's representative as specified in Section 22-330.6 shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and, in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, then he/she may not be present as an adviser until after he/she has testified.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(a) and 45 CFR 235.113(b)(1), (5), (6), and (7).

22-335 LOCAL LEVEL HEARINGS **22-335**

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-340.7 shall also inform the household member:
- .21 Of the right to appeal the decision within 25 days after the date the notice has been sent to the respondent by the county (see Section 22-340.6);
- .22 Of the date the disqualification will take effect unless a state level hearing is requested; and
- .23 That benefits shall be continued pending a state level hearing if the household is otherwise eligible.

22-335 LOCAL LEVEL HEARINGS
(Continued)

22-335

- .3 If the household member appeals the local level decision, the advance notice of the state level hearing, as specified in Section 22-315 shall be mailed to the respondent at least 15 days prior to the date of the scheduled state level hearing.
- .4 When a local level decision is appealed, CDSS shall conduct the state level de novo hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .41 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .5 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i); 45 CFR 235.113(b), (b)(2), (b)(11), and (b)(12).

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS

22-340

- .1 Decisions made by the ALJ or hearing official shall be based exclusively on evidence and other material introduced in the hearing record.
 - .11 The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the ALJ or hearing official shall be made available to the respondent or to his/her representative at a reasonable time and place.
- .2 After the hearing has been closed, the ALJ or hearing official shall prepare a written decision.
- .3 Decisions by the hearing authority shall:
 - .31 In the event of a local level hearing, consist of a decision memorandum summarizing the facts and identifying the regulations supporting the decision;

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS 22-340
(Continued)

- .32 In the event of any CDSS hearing, specify the reasons for the decision and identify the supporting evidence and regulations; and
- .33 Be made within 90 days from the date of the notice scheduling the hearing. (Sixty days from the request for a state level de novo hearing after a local level hearing decision.)
- .4 The Director or Chief Administrative Law Judge or his/her designee shall have the authority to reject the proposed decision of the ALJ and prepare a separate decision based upon the record in the case or to order an additional hearing.
- .5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
- .6 The CWD may not disqualify a respondent unless the decision of the ALJ finds that the respondent has committed an IPV or the respondent fails to request a state level de novo hearing within 25 days of the notice of an adverse local level hearing decision that proposes to disqualify the respondent **has been sent to the respondent.**
- .61 The CWD is not precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

HANDBOOK BEGINS HERE

- .611 For example, the CWD may have facts which substantiate that the AU failed to report a change in circumstances even though the CWD has not yet demonstrated that the failure to report was an IPV.

HANDBOOK ENDS HERE

- .7 If the decision of the ALJ, or hearing official at the local level hearing, finds that the respondent committed an IPV, the CWD shall provide a written notice to the respondent prior to disqualification.
- .71 The notice shall inform the respondent of the following:
 - .711 The decision and the reason for the decision;

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS 22-340
(Continued)

- .712 The period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice); and
- .713 The amount of payment the AU will receive during the disqualification period.
- .72 In cases of a respondent's disqualification resulting from a prior receipt of assistance, the disqualification shall be postponed until after a reapplication for AFDC assistance is approved.
- .8 If the respondent does not appear at the state level or local level hearing, a reopening of the case may be requested within 10 days of the hearing by the respondent. If good cause is established, a new hearing shall be scheduled.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.113(b)(3)(ii)(F) and (b)(8) through (12).

22-345 DISQUALIFICATION PENALTIES 22-345

- .1 A respondent who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an IPV pursuant to this chapter by a state or local level ADH or by a state or federal court shall be treated in the following manner:

 - .11 The CWD shall not take the respondent's needs into account when determining the AU's need and amount of assistance.
 - .12 Any resources and income of the disqualified respondent shall be considered available to the AU. The respondent's needs shall not be taken into account for six months for the first occasion of any such offense, one year for a second offense, and permanently for a third offense.
- .2 Any period for which a disqualification penalty is imposed shall remain in effect without possibility of an administrative stay unless, and until, the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such penalty is imposed be subject to review.

22-345 DISQUALIFICATION PENALTIES **22-345**
(Continued)

- .3 A disqualification penalty imposed on a respondent by one Title IV-A (Social Security Act) state agency may be used in determining the appropriate disqualification penalty for the individual by another Title IV-A state agency.
- .31 When a respondent with a prior violation(s) moves from one state to another and has been found to have committed an IPV(s), the state agency may impose the penalty based on the number of such violations committed in other states.
- .32 A state may establish interstate agreements with other states to share appropriate information.
- .4 In cases where a disqualification penalty and other sanctions or penalties apply:
- .41 The disqualification penalties in Section 22-345 shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses; and
- .42 The disqualification penalties imposed under this program only affect the respondent concerned and cannot substitute for other sanctions under the AFDC program (e.g., failure to participate in JOBS or to cooperate in obtaining child support).

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(c)(1) through (3).